

**Garrett Freight Lines, Inc. and Thomas R. Gray,
and International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers of
America, Local 631, Party to the Contract.
Case 31-CA-10704-1**

July 30, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND
MEMBERS FANNING AND JENKINS

Upon a charge filed on December 10, 1980, by Thomas R. Gray, herein called the Charging Party, and duly served on Garrett Freight Lines, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 31, issued a complaint and notice of hearing on February 20, 1981, and an amended complaint and notice of hearing on January 29, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint and notice of hearing, and amended complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on December 3, 1980, Respondent threatened to refuse to use employee Gray as casual labor on the dock and thereafter failed and refused and continues to fail and refuse to use Gray as a casual labor employee to the extent Respondent would have used him had he not attempted to invoke a provision in the collective-bargaining agreement.

No answer to the complaint having been filed, according to the uncontroverted documents submitted with the instant Motion for Summary Judgment, counsel for the General Counsel, on March 30, 1981, advised Respondent by telephone that no answer had been received and explained that an answer, specifically admitting or denying each allegation of the complaint, was required. Counsel for the General Counsel on March 30, 1981, sent Respondent a letter confirming this conversation. Thereafter on April 1, 1981, Respondent sent a letter to counsel for the General Counsel in which it generally denied the commission of unfair labor practices and stated that Gray, by his request, had given up all rights to local work in order to engage in another type of work for Respondent.

On October 14, 1981, counsel for the General Counsel filed with the Administrative Law Judge a Motion for Summary Judgment or in the alterna-

tive for partial summary judgment and to strike certain portions of Respondent's letter/answer on the grounds that Respondent's letter fails to meet the requirements of Section 102.20. On November 16, 1981, Respondent entered into an informal settlement agreement. On December 3, 1981, the Regional Office for Region 31, by letter, requested Respondent to comply with the terms of the settlement agreement. Thereafter, Respondent failed and refused to comply with the terms of the settlement agreement. On January 21, 1982, the Regional Director for Region 31, by letter, vacated and set aside the settlement agreement. On January 29, 1982, the Regional Director for Region 31 issued and served on Respondent an amended complaint and notice of hearing. On February 11, 1982, the Regional Director for Region 31 issued and served on Respondent an erratum correcting the date of hearing. Thereafter Respondent did not file an answer to the amended complaint. On February 22, 1982, counsel for the General Counsel, by letter, advised Respondent that no answer had been received; explained that an answer must specifically admit or deny every allegation in the amended complaint; and advised Respondent that counsel for the General Counsel intended to seek summary judgment. On April 15, 1982, counsel for the General Counsel filed with the Board a motion to transfer case to and continue proceedings before the Board and for summary judgment. On April 29, 1982, the Board issued an order transferring proceeding to the Board and Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent has filed no response to the Notice To Show Cause and, accordingly, the allegations of the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer

is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing issued on February 20, 1981, and was duly served on Respondent. It specifically stated that unless an answer to the complaint is filed by Respondent within 10 days of service thereof all the allegations in the complaint "shall be deemed to be admitted to be true and may be so found by the Board." As noted above, on March 30, 1981, counsel for the General Counsel advised Respondent both telephonically and in writing that an answer had not been received but extended the time for filing an answer. While Respondent then filed its letter dated April 1, 1981, as its purported answer, counsel for the General Counsel thereafter filed a Motion for Summary Judgment indicating that the letter was not a legally sufficient answer. No answer was thereafter filed by Respondent. Upon revocation of the settlement agreement by the Regional Director for Region 31 on January 21, 1982, an amended complaint issued on January 29, 1982. No answer was filed by Respondent to the amended complaint. On February 22, 1982, counsel for the General Counsel advised Respondent in writing that an answer had not been received and extended the time for filing answer. No answer was thereafter filed by Respondent.

The General Counsel concluded that Respondent did not file a legally adequate answer to the complaint. Although Respondent, in its letter of April 1, 1981, generally denied that it had discriminated against Gray, the letter was rejected on the ground that this answer did not conform with Section 102.20 quoted above. In a telephone conversation on March 30, 1981, and in letters dated March 30, 1981, and February 22, 1982, counsel for the General Counsel brought these matters to Respondent's attention and outlined the requirements of a legally sufficient answer. Respondent thereafter failed to comply with these requirements, even though the time period of such compliance was extended on two occasions. And, as noted, Respondent has not filed a response to the Notice To Show Cause.

It is clear that, when an answer to an unfair labor practice complaint is not filed in compliance with the Board's Rules, judgment may be rendered on the basis of the complaint alone.¹ Therefore, no

good cause to the contrary having been shown, and in accordance with the rule set forth above, the allegations of the complaint are deemed to be admitted and are found to be true. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is, and had been at all times material herein, a corporation duly organized under and existing by virtue of the laws of the State of Nevada, with an office and principal place of business located in Las Vegas, Nevada, where it is engaged in the interstate transportation of freight. Respondent, in the course and conduct of its business operations, annually sells and ships goods or services valued in excess of \$50,000 directly to customers located outside the State of Nevada from points within the State of Nevada. Respondent, in the course and conduct of its business operations, annually derives gross revenues in excess of \$500,000. We find that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 631, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE CHARGING PARTY

Thomas R. Gray is an employee within the meaning of Section 2(3) of the Act.

IV. THE UNFAIR LABOR PRACTICES

At all times material herein, Respondent and the Union have maintained in effect and enforced a collective-bargaining agreement covering wages, hours, and other terms and conditions of employment of certain employees of Respondent. On or about December 3, 1980, Respondent's employee Thomas R. Gray claimed the right to be paid for "deadhead" time for certain line runs. The claim made by Gray relates to terms and conditions of employment covered by the collective-bargaining agreement. On or about December 3, 1980, Respondent, acting through its supervisor, Munns, threatened to refuse to use Gray as casual labor on the dock. Since on or about December 3, 1980, and continuing to date, Respondent has refused to use

¹ *Neal B. Scott Commodities, Inc.*, 238 NLRB 32, 33 (1978).

Gray as a casual labor employee to the extent that Respondent would have used him had he not attempted to invoke a provision in the collective-bargaining agreement. Respondent engaged in the conduct described above in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Accordingly, we find that, by the aforesaid conduct, Respondent did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing, its employees in the exercise of the rights guaranteed them in Section 7 of the Act and that, by the aforesaid conduct, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth above in section IV, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Such affirmative action shall include using Thomas R. Gray as a casual labor employee to the extent Respondent would have used him had he not attempted to invoke a provision in the collective-bargaining agreement. We shall also order that Respondent make Thomas R. Gray whole for any loss he may have suffered as a result of Respondent's refusal to use him as casual labor to the extent Respondent would have used him if he had not attempted to invoke a provision in the collective-bargaining agreement, in accordance with the formula set forth in *F. W. Woolworth Company*, 91 NLRB 289 (1950), with interest as prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).²

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. The Respondent, Garrett Freight Lines, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 631, is a labor organization within the meaning of Section 2(5) of the Act.

3. Thomas R. Gray is an employee within the meaning of Section 2(3) of the Act.

4. By the acts described in section IV, above, Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them in Section 7 of the Act and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Garrett Freight Lines, Inc., Las Vegas, Nevada, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to use employees as casual labor employees because they attempt to invoke a provision in the collective-bargaining agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Use Thomas R. Gray as a casual labor employee to the extent he would have been used had he not attempted to invoke a provision in the collective-bargaining agreement.

(b) Make Thomas R. Gray whole for any loss he may have suffered in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Las Vegas, Nevada, place of business copies of the attached notice marked "Appen-

² See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

dix."³ Copies of said notice, on forms provided by the Regional Director for Region 31, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to use employees as casual labor employees because they attempt to invoke a provision in the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL use Thomas R. Gray as a casual labor employee to the extent we would have used him had he not attempted to invoke a provision in the collective-bargaining agreement.

WE WILL make Thomas R. Gray whole for any loss he may have suffered due to the discrimination practiced against him, with interest.

GARRETT FREIGHT LINES, INC.

